

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE UNITED STATES OF AMERICA,

Plaintiff,

versus

3:17 CR 45

BENJAMIN FAULKNER,

Defendant

Before: HONORABLE JOHN A. GIBNEY, JR.
United's States District Judge

May 17, 2017

Richmond, Virginia

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

Jessica D. Aber, Esq.
Assistant United States Attorney
For the United States

Cary B. Bowen, Esq.
For the defendant
The Defendant
In his own proper person

1 THE COURT: Do you need more time?

2 MR. BOWEN: I do not.

3 THE COURT: Get me the file on the next one.

4 All right.

5 This is the matter of United States versus Benjamin
6 Bowman. All right.

7 THE CLERK: The defendant needs to sign a document.

8 THE COURT: Okay.

9 Has the defendant signed the plea agreement?

10 MR. BOWEN: He is about to.

11 THE COURT: Let's get that signed. Also, is the
12 waiver of indictment signed?

13 Where is your Washington colleague today?

14 MS ABER: They determined after last week I would be
15 okay on my own.

16 THE COURT: Well, that is good.

17 MR. BOWEN: Is The Court making fun of -- I better
18 leave that alone.

19 THE COURT: Not making fun of her.

20 I don't make fun of her. She might come after me.

21 MR. BOWEN: I was thinking about the Washington
22 lawyer.

23 THE COURT: All right.

24 THE CLERK: 3:17 CR 45.

25 United States versus Benjamin Faulkner.

1 Ms Jessica Aber represents the United States.

2 Mr. Cary Bowen represents the defendant.

3 Are counsel ready to proceed?

4 MS ABER: United States is ready.

5 MR. BOWEN: We are, sir.

6 THE COURT: All right.

7 I understand that we are here today for

8 Mr. Faulkner's guilty plea; is that correct, Ms Aber?

9 MS ABER: That's correct, Your Honor.

10 THE COURT: Trying to find the information in this
11 case.

12 Is this a one-count information?

13 MS ABER: Yes, Your Honor. I can pass up a copy if
14 you would like.

15 THE COURT: All right. Yes. Okay.

16 This is a one-count information.

17 MS ABER: Yes, Your Honor.

18 THE COURT: Thank you. Thank you very much.

19 All right.

20 Mr. Faulkner, could you please come up to the podium
21 with Mr. Bowen.

22 Mr. Faulkner, I have some questions to ask you today.

23 To make sure that you are competent to make a plea today;

24 that you understand what we are doing; what you are

25 getting, what you are giving up.

1 I would like you to answer those questions under oath
2 or affirmation.

3 Do you have any objection to swearing on a bible?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right.

6 Place your left hand on the bible, raise your right,
7 and face the clerk.

8 (Defendant Sworn)

9 THE COURT: All right, Mr. Faulkner.
10 Could you please state your full name.

11 THE DEFENDANT: Benjamin Alexander Faulkner.

12 THE COURT: And your date of birth?

13 THE DEFENDANT: June 16, '91.

14 THE COURT: Are you a citizen of the United States?

15 THE DEFENDANT: No, I am not.

16 THE COURT: You are a Canadian; is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you read, write, and understand
19 English?

20 THE DEFENDANT: Yes.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Equivalent to masters degree here.

23 THE COURT: And where did you get that, sir.

24 THE DEFENDANT: I did my undergrad at Canadore
25 College and graduate school at Georgian College.

1 THE COURT: Those are in Canada?

2 THE DEFENDANT: Yes.

3 THE COURT: What did you get your masters in?

4 THE DEFENDANT: Computer security.

5 THE COURT: Okay.

6 Do you understand that you are now under oath and
7 that means you say anything false about an important
8 matter while you are under oath you can be charged with a
9 separate crime of perjury or making a false statement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Which would be in addition to anything
12 else. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that anything you say
15 today can be used against you in later criminal or civil
16 proceedings? Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Let me just give you sort of the low down
19 on what that might mean in your case.

20 I understand that there is a child victim in this
21 case, and if that child were to sue you at some point in
22 the future for injuries that you caused to him or her what
23 you say today can be used against you in that.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Should you also face charges somewhere
2 else -- I am sorry. I have -- can you go get my phone and
3 turn it off, please. I have hearing aids that have blue
4 tooth, and right now my phone is making noise and I am
5 hearing it here on the bench. I apologize for this.

6 THE DEFENDANT: That is actually really cool.

7 THE COURT: It is very cool. One time I was up here
8 and they started to play The Doors for me.

9 I am very sorry, Mr. Faulkner, it is not that I don't
10 take this seriously.

11 THE DEFENDANT: No problem at all.

12 THE COURT: I just did not expect that to happen.
13 All right.

14 So, if you have -- if similar events, like if you
15 have similar charges like this elsewhere, your guilty plea
16 today could be used to help establish your modis operandi
17 or method for doing things. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 I have some questions now to ask you about your
21 physical and mental condition.

22 Are you currently under the care of a doctor or a
23 psychiatrist or psychologist, or anything like that?

24 THE DEFENDANT: No.

25 THE COURT: All right.

1 Have you recently been under the care of doctor or
2 psychologist, or any kind of health care professional?

3 THE DEFENDANT: No.

4 THE COURT: All right.

5 Have you recently been in a hospital for any reason?

6 THE DEFENDANT: Yes.

7 THE COURT: What were you in a hospital for?

8 THE DEFENDANT: Attempted suicide.

9 THE COURT: When was that?

10 THE DEFENDANT: Seventh of last month.

11 THE COURT: All right.

12 Obviously -- did you see a doctor when you were in
13 the hospital?

14 THE DEFENDANT: Psychological variety?

15 THE COURT: Any variety.

16 THE DEFENDANT: Yes.

17 THE COURT: And what -- tell me about your suicide
18 attempt.

19 THE DEFENDANT: In what sense?

20 THE COURT: What did you do?

21 THE DEFENDANT: Well, it was, got a sheet and tried
22 to hang myself.

23 THE COURT: Tried to hang yourself with a sheet?

24 THE DEFENDANT: Yes.

25 THE COURT: And were you unconscious as a result of

1 that?

2 THE DEFENDANT: No.

3 THE COURT: Did you -- did the doctors at the
4 hospital suggest that you had suffered any brain damage as
5 a result of that suicide attempt?

6 THE DEFENDANT: They thought as much, but by the time
7 I left they said I didn't.

8 THE COURT: Figured out you had done okay?

9 THE DEFENDANT: Yes.

10 THE COURT: Did they give you any medication to take
11 at that time?

12 THE DEFENDANT: Nope.

13 THE COURT: All right.

14 Do you take any regular medicines of any sort?

15 THE DEFENDANT: No.

16 THE COURT: Are you addicted to alcohol or drugs of
17 any sort, whether legal or illegal?

18 THE DEFENDANT: Nope.

19 THE COURT: Have you ever been treated for alcohol or
20 drug abuse?

21 THE DEFENDANT: No.

22 THE COURT: Although not addicted, do you abuse
23 alcohol or drugs, whether legal or illegal?

24 THE DEFENDANT: No.

25 THE COURT: All right.

1 Other than your suicide trip to the hospital -- I'm
2 not sure whether that falls in this category or not --
3 have you been treated during the past year for any kind of
4 mental illness?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you think you are suffering under any
7 mental illness that is undiagnosed at this time?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right.

10 Mr. Bowen, do you have any doubts about his
11 competence or ability to understand today's proceedings
12 and to enter a plea?

13 MR. BOWEN: I do not, sir. I spoke to officials
14 about his suicide attempt and am satisfied that other than
15 bruises to his body and other things, he was okay.

16 THE COURT: All right. Thank you.

17 MR. BOWEN: Yes, sir.

18 THE COURT: Mr. Faulkner, you are charged with a
19 crime in what is called an information. An information --
20 have you seen the information in this case?

21 THE DEFENDANT: I believe so.

22 THE COURT: Have you read it?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you talk about it with Mr. Bowen?

25 THE DEFENDANT: Yes.

1 THE COURT: All right.

2 You have a right under our law to be indicted. That
3 means that before you get indicted the government goes and
4 presents its case the evidence it has in summary form to a
5 group of people. And they decide whether there is
6 reasonable cause for you to be charged and go to trial.
7 In this case they haven't done that. Instead they have
8 issued what is called a information. An information is
9 kind over like a traffic ticket. Have you ever gotten a
10 traffic ticket?

11 THE DEFENDANT: Once.

12 THE COURT: All right. So what happens when you get
13 a ticket you park on the side of the road, the officer
14 writes down what he or she thinks you did, and they give
15 you the ticket and you go to court later on. This is
16 analogous to that, although obviously much more serious.

17 What happens is that the government attorney, Ms Aber
18 write up what charge you face, and you go to trial or to a
19 plea based on that charge. It doesn't go before a grand
20 jury.

21 Now, you have an absolute right to have your case
22 submitted to a grand jury. And if you want to do that, I
23 am happy to have them do that and we will come back
24 another day, or you can go forward based on the
25 information.

1 Knowing that you have an absolute right to insist on
2 an indictment, is it nevertheless your desire to go
3 forward on the information?

4 THE DEFENDANT: It is.

5 THE COURT: I have in front of me here a document
6 called waiver of indictment. It says that you understand
7 that you have been accused of the crime and you have a
8 right to be indicted and you decide not to go and have a
9 grand jury hear this case. Knowing what I just told you,
10 is it still your desire to go forward on this waiver of
11 indictment?

12 THE DEFENDANT: It is.

13 THE COURT: All right.

14 I will accept that and I will sign it.

15 Okay. All right.

16 Now, are you the person named in the information in
17 this case?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed the charges with your
20 attorney, Mr. Bowen?

21 THE DEFENDANT: I have.

22 THE COURT: Have you had a chance to tell him your
23 side of the case?

24 THE DEFENDANT: Absolutely.

25 THE COURT: Have you told him everything you know

1 about it?

2 THE DEFENDANT: Um hum.

3 THE COURT: All right. You have to say "yes" or
4 "no."

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And the reason I ask you that is that he
7 can help you best if he has all the information in the
8 case. Do you understand that?

9 THE DEFENDANT: Of course.

10 THE COURT: All right.

11 Are you fully satisfied with the services and advice
12 provided to you by Mr. Bowen?

13 THE DEFENDANT: A hundred percent, yes.

14 THE COURT: All right.

15 Are there any questions that you have asked him that
16 he did not answer for you?

17 THE DEFENDANT: No.

18 THE COURT: Is there anything you have asked
19 Mr. Bowen to do that he has not done?

20 THE DEFENDANT: No. He works really well.

21 THE COURT: All right.

22 Do you understand that you are charged with
23 aggravated sexual abuse. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that there is no

1 agreement with respect to sentencing in this case? And
2 that if you plead guilty I will determine the sentence?

3 THE DEFENDANT: Yes.

4 THE COURT: All right.

5 Has Mr. Bowen gone over with you what the government
6 has to prove for you to be found guilty of the charges in
7 this case?

8 THE DEFENDANT: I believe so.

9 THE COURT: All right.

10 I have a document in front of me here that says "plea
11 agreement" at the top. And it has what appears to be your
12 signature on page ten. Is this your signature on page ten
13 of the plea agreement?

14 THE DEFENDANT: Yes it is.

15 THE COURT: Did you sign that today?

16 THE DEFENDANT: Yes.

17 THE COURT: Before you signed it did you read the
18 plea agreement?

19 THE DEFENDANT: I have it in the past.

20 THE COURT: All right.

21 Did Mr. Bowen explain to you in the past what it
22 meant?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you ask him any questions you had
25 about it?

1 THE DEFENDANT: Yes, I did.

2 THE COURT: Did he answer those questions?

3 THE DEFENDANT: To the fullest extent that I am aware
4 of.

5 THE COURT: All right.

6 I have here also a document that says "statement of
7 facts." This says essentially that you went across a
8 state line with the intent to engage in a sexual act with
9 a person under 12 years old, and that you did in fact have
10 some sort of sexual conduct or contact, rather, with a
11 four-year-old minor. And that is what the statement of
12 facts says, in essence.

13 Did you read that statement of facts?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: It has your signature on page three. Is
16 that your signature?

17 THE DEFENDANT: It is.

18 THE COURT: Did you sign that today?

19 THE DEFENDANT: I did.

20 THE COURT: Did you read it before you signed it?

21 THE DEFENDANT: I did.

22 THE COURT: Did Mr. Bowen explain it to you?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you have any questions about it?

25 THE DEFENDANT: No.

1 THE COURT: All right.

2 Did you sign the statement of facts because it is in
3 fact true?

4 THE DEFENDANT: Yes.

5 THE COURT: All right.

6 Are you pleading guilty because you are in fact
7 guilty of the charge against you?

8 THE DEFENDANT: I am.

9 THE COURT: Do you believe it is in your best
10 interest to plead guilty in this case?

11 THE DEFENDANT: Yes.

12 THE COURT: All right.

13 Okay. Did Mr. Bowen before you signed these
14 documents go over with you the evidence that he believes
15 the prosecution or the government can present against you
16 in this case?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you discussed with Mr. Bowen whether
19 in fact you are guilty of the charge with which you are
20 charged?

21 THE DEFENDANT: Yes.

22 THE COURT: All right.

23 Now, this plea agreement that we just looked at. Is
24 that the complete agreement that you have with the
25 government? In other words, do you have any side deals

1 that are not written down in that?

2 THE DEFENDANT: Not that I know of.

3 THE COURT: That plea agreement says that --

4 MR. BOWEN: May I interrupt a minute? I think there
5 is something else we are not talking about here. The way
6 the government might make a recommendation.

7 THE COURT: Getting ready to get to that.

8 MR. BOWEN: All right, sir.

9 THE COURT: In the plea agreement it says that the
10 government will not -- will agree not to recommend more
11 than 50 years of confinement for you.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that that is not
15 binding on me? That I could sentence you to more or less
16 than whatever they have?

17 THE DEFENDANT: Yes.

18 THE COURT: All right.

19 Now, are there any other side deals beyond that?

20 MR. BOWEN: I explained to him that we have, we have
21 the privilege to argue for less than a 50-year sentence.

22 THE COURT: Right.

23 MR. BOWEN: And that will be -- and he has been over
24 that with me.

25 THE COURT: All right.

1 You can always argue for less then they ask for.

2 MR. BOWEN: And nobody knows what you are going to
3 do.

4 THE COURT: That's right.

5 Do you have any agreement with anybody other than
6 what is in the plea agreement?

7 THE DEFENDANT: No.

8 THE COURT: All right.

9 Has anybody made any promises to you in order to get
10 you to plead guilty?

11 Other than what is in the plea agreement?

12 THE DEFENDANT: No.

13 THE COURT: Other than what is in the plea agreement
14 has anybody made any threats against you other than the
15 threat that they would continue to prosecute you?

16 THE DEFENDANT: No.

17 THE COURT: All right.

18 All right. You are pleading guilty of your own free
19 will; is that right?

20 THE DEFENDANT: That is correct.

21 THE COURT: Now, you understand if you get a longer
22 sentence than you anticipate that you can't change your
23 plea to not guilty at that time?

24 THE DEFENDANT: Yes.

25 THE COURT: All right.

1 Do you understand that this charge is a felony and it
2 has some affect on your rights? For instance, you cannot
3 possess a firearm in our country. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: It also will affect your residency
6 status. At the end of any prison sentence that you get in
7 this case you will be deported to Canada. Do you
8 understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Okay.

11 Do you understand that the maximum punishment for
12 this offense is life in prison, and that there is a
13 mandatory minimum of 30 years?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that the mandatory
16 minimum means that no matter how much I like you at the
17 end of this case I cannot sentence you to less than 30
18 years?

19 THE DEFENDANT: Yes.

20 THE COURT: All right.

21 Do you understand that you will also face something
22 called supervised release. And I will tell you what that
23 is in a minute. That can run five years to life. Do you
24 understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: All right.

2 Supervised release means that you have to report to a
3 probation officer periodically, and you will have some
4 restrictions on you; like, in your case they will be
5 allowed to look at any computers that you have or similar
6 devices that might exist in the future.

7 And you will have to have a job, and they may give
8 you drug screens and things like that.

9 Do you understand that that is the kind of
10 supervision that you will get, that you can get, at the
11 end of your time in prison in this case?

12 THE DEFENDANT: Yes.

13 THE COURT: All right.

14 You can also be fined for \$250,000; do you understand
15 that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that part of your
18 sentence in this case can be that you will be required to
19 provide restitution to the child involved in this case?
20 In other words, if he or she has been injured in some way
21 and needs doctor's treatment or something like that, they
22 can come and ask you to pay that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right.

25 And you will be required to pay that. Do you

1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: All right.

4 You will also be required to pay a special assessment
5 of at least a hundred dollars, and if you have the funds,
6 up to \$5,000. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay.

9 Do you have any charges pending against you anywhere
10 else at this time?

11 THE DEFENDANT: Tennessee.

12 THE COURT: All right.

13 You have been indicted in Tennessee?

14 MR. BOWEN: I am not sure you have been indicted.

15 THE COURT: All right.

16 He is looking at the same charges there that the
17 other fellow was?

18 MS ABER: Yes, Your Honor.

19 MR. BOWEN: That's correct.

20 THE COURT: All right.

21 So you may have some charges pending in Tennessee
22 either now or in the future, but you are not out on bond
23 on those or anything, are you?

24 THE DEFENDANT: No.

25 THE COURT: Are you on bond for any offenses anywhere

1 else?

2 THE DEFENDANT: No.

3 THE COURT: Are you currently under a suspended
4 sentence that might get revoked? In other words, if you
5 are sentenced to a certain amount of time but the judge
6 did not impose it all?

7 THE DEFENDANT: No.

8 THE COURT: All right.

9 Have you and Mr. Bowen discussed the Federal
10 Sentencing Guidelines?

11 THE DEFENDANT: Yes.

12 THE COURT: All right.

13 Here is what the Federal Sentencing Guidelines are.
14 They are a system that the Federal Government has imposed
15 in which a probation officer will meet with you and gather
16 information about you and the offense with which you are
17 charged. You will then -- they plug all that into a
18 formula, and the guidelines suggest to me a range of
19 sentence that you will receive. It is typically in terms
20 of months. So it could be like 240 to 280 months. And
21 the guidelines suggest that I sentence you somewhere in
22 there. Now, there are two things you need to know about
23 that. One is that regardless of what the guidelines say,
24 you still face the 30 year mandatory minimum. The second
25 thing is that the guidelines are advisory. That means I

1 don't have to go by them. I can sentence you above or
2 below those guidelines.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, do you understand that we have to
6 compute a guideline range before you can be sentenced in
7 this case?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, Mr. Bowen I am sure has gone over
10 with you where he thinks your guidelines will come out in
11 this case.

12 THE DEFENDANT: He has been rather thorough.

13 THE COURT: Thorough he is. Mr. Bowen is one of the
14 best lawyers that we have who practices here.

15 THE DEFENDANT: So I have been told.

16 THE COURT: Excuse me?

17 THE DEFENDANT: So I have been told.

18 THE COURT: Well, you have been told correctly.

19 But, neither Mr. Bowen nor Mrs. Aber, nor I, nor
20 anybody else can tell you right now what your guidelines
21 are going to be. No one can tell you that until a
22 probation officer meets with you, gets information from
23 you, gets information from other sources, and computes the
24 guidelines, submits them to me and I approve them. So,
25 Mr. Bowen I am sure has given you as good an estimated,

1 educated guess as you can get, but it is exactly that, an
2 educated estimate.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You will have the right before you are
6 sentenced to come and tell me if the guidelines are
7 computed correctly or incorrectly. If you don't think
8 they are right, you let Mr. Bowen know and he will tell
9 me. There will be other information in your presentence
10 report, kind of a mini biography that will tell me what
11 your life has been like. If there is anything in your
12 presentence report that is not accurate or that is false,
13 it is your job to tell me so that I have the right
14 information in front of me when I sentence you.

15 I don't know you from Adam. And one of the ways that
16 I get to know you is through your presentence report. So,
17 please, when you meet -- you will have a chance to meet
18 with the probation officer and provide him or her
19 information about yourself. Please be forthcoming in that
20 so that I will have the full picture of you when we come
21 to sentencing time.

22 Do you understand that?

23 THE DEFENDANT: I will do the best I can.

24 THE COURT: All right.

25 In addition -- and you will also have the right to

1 tell me if any of the factual data in the mini biography
2 is wrong.

3 All right. So be sure to draw that to my attention.

4 Okay?

5 THE DEFENDANT: Yes.

6 THE COURT: All right.

7 In imposing a sentence on you, in addition to the
8 guidelines, the Federal Sentencing Guidelines, I will
9 consider the factors that are set out in United States
10 Code to determine your sentence. I will tell you what
11 those are now so before you enter your plea you will know
12 what I will be looking at.

13 First, the nature and circumstances of the offense.
14 In other words, what happened?

15 Second, the history and characteristics of the
16 defendant. In other words, what kind of person you are.

17 Third, the seriousness of the offense.

18 The need to provide just punishment for the offense.

19 The need to deter other people from committing
20 similar offenses. In other words, to set an example so
21 people in the public won't do this in the future.

22 The need to deter you from doing this in the future.

23 The need to protect the public from further crimes by
24 you.

25 The ability of our correctional system to provide you

1 education or vocational training, medical care, or other
2 correctional treatment.

3 I will consider the kinds of sentences available, the
4 length of sentences imposed on other people for similar
5 crimes.

6 I will consider restitution.

7 And as I said, I will consider the Federal Sentencing
8 Guidelines.

9 I will try to come up with a sentence that is long
10 enough but not longer than necessary to address each of
11 those concerns.

12 Do you understand that that is what I will think
13 about in sentencing you?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that parole is
16 abolished abolished, and that if you are sent to prison,
17 you do not get release early on parole?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that the prosecution is
20 allowed to appeal any sentence I impose in this case, but
21 you have given up that right in your plea agreement as
22 long as it is within the statutory limits of how long I
23 can sentence you?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay.

1 By pleading guilty you are giving up a lot of
2 important rights that anybody who pleads guilty in this
3 courtroom would have.

4 One of those is the right to plead not guilty, go to
5 trial, and insist that the government prove you guilty
6 beyond a reasonable doubt.

7 If you go to trial the government would have to prove
8 every part of this offense against you beyond a reasonable
9 doubt. You would be presumed innocent. You would not
10 have to produce any evidence. You would not have to call
11 witnesses. And, most importantly, you would not have to
12 get up and testify yourself. And if you didn't call
13 witnesses, or if you didn't produce documents or pictures
14 or anything like that, or if you didn't testify, nobody
15 could hold that against you because the government always
16 has the burden of proving you guilty beyond a reasonable
17 doubt. And nobody could argue to the the jury, he must be
18 guilty because he didn't get up and tell you his side of
19 the story.

20 If Mr. Bowen wanted me to, I would tell them you
21 cannot hold -- I would tell the jury that they cannot hold
22 that against you.

23 But you have given that, all those rights up; do you
24 understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: You would also have the right to have a
2 lawyer represent you. And I understand that Mr. Bowen is
3 a retained lawyer. That means you hired him. If you were
4 to run out of money and couldn't afford him any more, I
5 would appoint a lawyer to represent you in this case.

6 You would, in any event, have a lawyer with you at
7 every stage of the case.

8 You would have the right to subpoena witnesses. That
9 means you can ask The Court to enter an order telling
10 people they have to come here and testify.

11 You would have the right to see and hear all the
12 witnesses who testify against you. They would have to
13 testify right in front of you about whatever facts they
14 offer to The Court.

15 Mr. Bowen would have the right to ask them questions.
16 And that is called cross examination.

17 You and Mr. Bowen would have the right to see any
18 documents or exhibits or photographs or anything like
19 that that the government would try to put into evidence,
20 and if appropriate, to object to that before it is
21 considered by the jury or me in the case.

22 But you have given up those rights as well.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You have the right to be tried, as I

1 indicated a moment ago by a jury, a jury of 12 people.

2 They would have to vote unanimously to find you guilty.

3 If a single one of those 12 did not think you were
4 guilty, you could not be convicted -- sometimes they can
5 try you again -- but you could not be convicted. You have
6 given up that right as well. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: When you plead guilty, as I said to you
9 earlier, you give up the right to remain silent. And the
10 government can summons you and ask you questions in court
11 or before a grand jury, and you have to answer those
12 truthfully as long as they don't open you up to additional
13 charges or punishment.

14 So, for instance, if you were involved with other
15 people in the offense involved here they could call you as
16 a witness and you would have to say what role those people
17 had in this offense. But you have given up that right as
18 well.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that by pleading guilty
22 you are giving up all of those rights and there will be no
23 trial at all?

24 THE DEFENDANT: Yes.

25 THE COURT: All right.

1 You are charged with aggravated sexual abuse of a
2 minor. In order to prove you guilty of that the
3 government has to show that you crossed a state line with
4 the intent to engage in a sexual act with a person under
5 the age of 12. And that you knowingly engaged in a sexual
6 act with a person under the age of 12. Do you agree that
7 the government could prove each of those facts?

8 THE DEFENDANT: Yes.

9 THE COURT: Is there anything I have asked you today
10 that you did not understand?

11 THE DEFENDANT: No.

12 THE COURT: You have been very cooperative, and I
13 appreciate that.

14 Do you have any questions you want to ask me about
15 your rights or the charges against you, or the sentencing
16 procedures, or anything else we have covered?

17 THE DEFENDANT: Between you and Cary you have been,
18 both been very thorough, and I am satisfied.

19 THE COURT: So you have no questions.

20 THE DEFENDANT: No questions.

21 THE COURT: Do you need any additional time to talk
22 to Mr. Bowen before you are enter a guilty plea?

23 THE DEFENDANT: I don't think so.

24 THE COURT: Mr. Bowen, are you aware of any reason
25 why we should not accept his plea today?

1 MR. BOWEN: No, sir.

2 THE COURT: All right.

3 In that case, face the clerk and enter your plea.

4 THE CLERK: Benjamin Faulkner, you understand the
5 charge against you in the criminal information. I ask you
6 now, what is your plea, guilty or not guilty as to count
7 one?

8 THE DEFENDANT: Guilty.

9 THE COURT: All right.

10 Thank you very much, sir. You may be seated.

11 THE DEFENDANT: Thank you.

12 THE COURT: It is the finding of The Court in case of
13 United States versus Faulkner that Mr. Faulkner is fully
14 competent and capable of entering an informed plea, that
15 Mr. Faulkner is aware of the nature of the charges and the
16 consequences of the plea, that the plea of guilty is a
17 knowing and voluntary plea, and the plea is supported by
18 an independent factual basis containing each of the
19 essential elements of the offense. The plea is therefore
20 accepted and Mr. Faulkner is now adjudged guilty of that
21 offense.

22 Mr. Faulkner, as I said earlier, they will be
23 preparing a presentence report about you in this case. As
24 as I also said earlier, you will have the chance to meet
25 with the probation officer. I urge you to take advantage

1 of that. Mr. Bowen will be there. And that way you will
2 be able to put your best foot forward when it comes to
3 sentencing you in this case.

4 When we come to sentence you, Mr. Faulkner, Mr. Bowen
5 will make argument or speech to me on your behalf. You
6 also will have the opportunity to address The Court and
7 tell me what it is that you want me to think about in
8 sentencing you.

9 I strongly urge you to take that, because, as I said
10 to you earlier, I really don't know you very well. And
11 one of the ways I get to know a little bit about you as a
12 person is what you say to me at sentencing.

13 Two things. One is, before you get up and talk, go
14 over what you are going to say with Mr. Bowen so you don't
15 accidentally say something to hurt yourself. Second,
16 practice it before you come because you will be nervous
17 that day. And, you know, I don't want to you forget
18 something that you meant to say. All right.

19 Let's set a date for sentencing in this case. When
20 did we set that other one?

21 MS ABER: September 26, Your Honor.

22 THE COURT: All right.

23 Are you available the 26th of September, Mr. Bowen?
24 Or are you off --

25 MR. BOWEN: I am looking to see what my wife has

1 written in this book. And I am nervous as we speak.

2 Well, I see nothing through it, so I assume it is
3 good.

4 THE COURT: All right.

5 Let's do that at 10:00 o'clock on the 26th.

6 Mr. Bowen, does that give you sufficient time to get
7 all the mitigation evidence that you think you might need?

8 MR. BOWEN: I am confident it will.

9 THE COURT: All right.

10 Well, if you run into problems in that regard, let us
11 know.

12 MR. BOWEN: Thank you, sir.

13 THE COURT: I don't want to throw things off. All
14 right.

15 Anything else?

16 MS ABER: No, Your Honor.

17 THE COURT: Anything else?

18 MR. BOWEN: No, but thank you for your kind comments,
19 even if they have misguided.

20 THE DEFENDANT: I have known Mr. Bowen for a long
21 time. He has laughed at me in court. But not since I
22 started to wear the robe.

23 MR. BOWEN: Once.

24 THE COURT: I don't get laughed at as much now as I
25 used to.

1 All right. Let's adjourn court.

2 Thank you very much, sir.

3 Sir, I will see you in September.

4

5 HEARING ADJOURNED

6

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8 The foregoing is a true and correct transcript.

9 Gilbert Frank Halasz, RMR

10 Official Court Reporter

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